

**Editor's note: Appealed -- aff'd, Civ. No. 2155 (D.Mont. Jan. 17, 1973)**

UNITED STATES OF AMERICA  
v.  
CHARLES W. KOHL AND CORA A. KOHL

IBLA 70-501

Decided April 13, 1972

Appeal from hearing examiner's decision, Montana 1796, holding mining claim null and void.

Affirmed.

Mining Claims: Determination of Validity--Mining Claims:  
Discovery: Generally

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Discovery: Generally

Evidence of mineralization sufficient only to warrant further exploration in the hope of finding a valuable deposit is insufficient to establish discovery of a valuable mineral deposit under the mining laws.

Mining Claims: Contests--Mining Claims: Determination of  
Validity--Rules of Practice: Government Contests

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

Mining Claims: Generally--Mining Claims: Discovery

The provisions of Rev. Stat. sec. 2332, 30 U.S.C. § 38, do not provide an independent means of acquiring title to a mining claim and particularly do not dispense with the necessity of there being a valid discovery on the claim.

APPEARANCES: Cordell Johnson (Gough, Booth, Shanahan & Johnson) for appellant; Robert W. Parker, Office of the General Counsel, U.S. Department of Agriculture, for the government.

OPINION BY MR. HENRIQUES

Charles W. Kohl and Cora A. Kohl have appealed from a decision of a hearing examiner dated December 3, 1969, which declared the Blue Bird lode mining claim null and void for lack of a discovery of a valuable mineral deposit within the limits of the claim.

The record shows that the Kohls, in response to a notice in a surface rights determination proceeding initiated by the Forest Service, Montana 032255, timely filed a verified statement naming the Blue Bird and other lode mining claims, with the Bureau of Land Management (BLM) on January 27, 1958. Thereafter, at the request of the Forest Service after a mineral examination, BLM issued contest complaint M 1669 against the Blue Bird lode mining claim and other claims not here pertinent. The Kohls denied the allegations in the complaint and a hearing was scheduled. However, on November 12, 1958, at a prehearing conference in stipulations jointly executed by the Kohls and counsel for the government, the Kohls withdrew the verified statement relating to the Blue Bird claim and acknowledged that all their claims named in the statement were subject to the limitations and restrictions of sec. 4, Act of July 23, 1955, and agreed to take a special land use permit from the Forest Service to cover their continued use of the Blue Bird claim as a place of residence, and the Forest Service agreed to withdraw its complaint against the Blue Bird claim and to terminate the contest proceedings. On March 31, 1959, the Forest Service did issue a special land use permit to the Kohls, for an annual rental of \$25. In 1966 the rental was increased to \$40 per annum, at which time the Kohls discontinued payment of the charge. In 1967, following examination of the Blue Bird claim by a mining engineer employed by the Forest Service, in company with Mr. Kohl, the Forest Service again requested BLM to issue a complaint charging, inter alia, no discovery of a valuable mineral deposit within the limits of the claim. After proper service of a complaint, the Kohls again denied the charges. The issues being joined, Contest M 1796 went to a hearing, at which Mr. Kohl appeared without counsel, although he was advised of his rights to be represented.

The Government, through documentary evidence and the testimony of a qualified witness, Robert W. Manchester, a supervising geologist employed by the U.S. Forest Service, United States Department of Agriculture, submitted the following case.

The claim was located February 15, 1907, and is situated within the Helena National Forest and in particular is located in Section 11,

T. 9 N., R. 4 W., P.M. The first annual assessment work was shown for the Blue Bird Lode, recorded November 4, 1914, in Book 6, page 493. It showed 29 days of work were spent on the claim sinking a shaft 10 feet deep, by 4 feet by 5 feet long. Contestees acquired the claim in 1929 by quitclaim deed from a Mrs. Thomas Williams.

The claim was examined on four separate occasions, with contestee Charles W. Kohl present, from 1957 through 1969. The claim was examined for the first time on August 19, 1957. On this occasion two samples were taken from two points and assayed. Another point was visited but was partially caved with nothing exposed in it for sampling. Sample "BB-1" showed gold, none; silver, none. Sample "BB-2" showed gold, none; silver, a trace; and copper, none. On October 20, 1958, the claim was re-examined. On this occasion two samples were made. Another point was visited but contestees did not consider there was anything of consequence to sample there. Sample "BB-3" showed .02 oz. gold and one-tenth oz. of silver per ton. Sample "BB-4" showed gold, none; silver, none.

The next examination was made on October 3, 1966. On this occasion three samples were made. Another point was revisited which had been caved, there was nothing open in it for sampling. Sample "3-BB" showed four-hundredths ounce gold, two-tenths of an ounce of silver per ton and a trace of copper. Sample "3-BB-2" showed a trace of gold and two-tenths ounce of silver. Sample "3-BB-3" showed one-hundredth ounce gold and two-tenths ounce silver.

The claim was re-examined on June 10, 1969, to see if there were any changes that would denote a change from the original examinations. It was found that there were no significant changes in the workings as a result of which no samples were taken.

Manchester testified that the percentages of gold and silver contained in the samples, referred to supra, that were assayed, had no value or no significance. He concluded that the claim in the mining sense is nonmineral ground and that the claim would not justify the expenditure of money and effort by a prudent man in an attempt to develop a paying mine.

The contestees were afforded an opportunity to submit evidence to establish that their claim was valid. Mr. Kohl testified that he acquired the claim in question through a quit-claim deed from the widow of a mesne owner; that he had used the Blue Bird claim as his place of residence for more than 35 years. He made several assertions as to the mineral value of the claim, and also submitted several rock samples which purportedly came from the claim. These declarations

were not substantiated by testimony of experts or others, nor by assay reports or other documentary evidence. He stated that he wanted to do more prospecting on the claim by deep drilling.

The hearing examiner, in holding the claim invalid emphasized that in contest proceedings the Government bears the burden of producing sufficient evidence to establish a prima facie case and that the burden thereafter is upon the mining claimant to show by a preponderance of the evidence that his claim is valid. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). He further emphasized that the claimant must show that he made a discovery of a valuable mineral deposit within the limits of the claim as prescribed by the mining laws which in Departmental and judicial decisions means applying the "prudent man" test set out in Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313, 322 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335 (1963); United States v. Coleman, 390 U.S. 599 (1968). In concluding that the claim was invalid, the examiner further recognized the difference between exploration and discovery. Where minerals are found, further exploratory work is often required to determine if the minerals have value, and where the minerals are of low value, still more exploratory work is needed to determine if sufficient quantities of the minerals exist to make success in developing a paying mine a reasonable prospect. See United States v. Vernon O. and Ina C. White, 72 I.D. 522 (1965); sustained in White v. Udall, 404 F.2d 334 (9th Cir. 1968); United States v. Ford M. Converse, 72 I.D. 141 (1965); sustained in Converse v. Udall, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

In their Reasons for Appeal, the contestees contend that the decision in this contest is in conflict with the decision in contest M 1669, which has become final and is binding upon the United States; that contestees acquired title to the Blue Bird Lode Mining Claim in 1929 by reason of the fact that they have lived on the claim openly for a period of time exceeding 40 years; that the land embraced within the exterior boundaries of the claim is mineral in character; that the hearing was insufficient to establish a prima facie case; and that the evidence presented by the contestees at the hearing showed by a preponderance of the evidence that their claim to Blue Bird Mining Claim is valid.

We find no basis for reversing the decision of the examiner. The Government established a prima facie case in support of its complaint while the contestees failed to show by a preponderance of the evidence that their claim was valid. Cf. United States v. Maurice E. Jones, 2 IBLA 237 (1971).

Having found that the claim is invalid for lack of discovery, we need not dispose of the other issues raised by the appellants. We point out, however, that the United States may inquire into the validity of a mining claim at any time until patent is issued. Cameron v. United States, 252 U.S. 450 (1920); United States v. Ed and Leona Jaensch, A-30225 (April 29, 1965); United States v. H. B. Webb, 1 IBLA 67 (1970). Further, we add that mere occupation of public lands under the guise of a mining location for whatever length of time does not dispense with the necessity of a discovery of a valuable mineral deposit to sustain a lode mining location. Cf. Cole v. Ralph, 252 U.S. 286 (1920); United States v. Alice A. and Carrie H. Boyle, 76 I.D. 318 (1969).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the examiner is affirmed.

Douglas E. Henriques, Member

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We concur:

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Martin Ritvo, Member

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Joseph W. Goss, Member

